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Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1989

FREDERICK WAYNE HELTON,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF AND ARGUMENT IN OPPOSITION
TO THE PETITION

OF

DON SIEGELMAN
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENT

ADDRESS OF COUNSEL:

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QUESTIONS PRESENTED

1. Does a clerical error in the description of the place to be searched invalidate a search warrant, where the description taken as a whole would permit any reasonable officer to identify the place to be searched to the exclusion of all others?

2. Where officers know that L.S.D. has been recently obtained from a white male named "Wayne" at a certain residence, and a neutral magistrate has found probable cause to believe that L.S.D. is located at said residence, is there probable cause to arrest the only person observed at the residence during a period of surveillance, where such person is a white male named "Wayne"?

3. Where the evidence presented by the prosecution is such that from it a rational trier of fact could reasonably find that guilt was proven beyond a reasonable doubt, is the evidence sufficient to authorize a conviction?

THE PARTIES

In the Circuit Court of Mobile County, Alabama, the Court of Criminal Appeals of Alabama, and the Supreme Court of Alabama, the parties were Frederick Wayne Helton, who is Petitioner herein, as defendant, Appellant and Petitioner, respectively, and the State of Alabama, who is Respondent herein, as Plaintiff, Appellee, and Respondent, respectively.

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TO THE PETITION

OPINIONS BELOW

The opinions and orders of Alabama Appellate Courts in the Petitioner's case, affirming his conviction, denying rehearing and denying certiorari are reported as follows:

Helton v. State, 549 So.2d 589 (Ala. Crim. App, 1989)

JURISDICTION

The petitioner has invoked this Honorable Court's jurisdiction under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner is making an alleged claim under the Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

STATUTORY PROVISIONS INVOLVED

No statutory provisions are involved in this cause.

STATEMENT OF THE CASE

The Petitioner, Frederick Wayne Helton, was indicted for possession of a controlled substance¹, to wit, Lysergic acid

¹ "§ 20-2-70. PROHIBITED ACTS A.

(a) Except as authorized by this chapter, any person who possesses...controlled substances enumerated in schedules.I...is guilty of a felony and, upon conviction, for the first offense may be imprisoned for not less than two nor more than 15 years and, in addition may be fined not more than \$25,000.00...." (Code of Alabama, 1985)

diethylamide², a.k.a. "L.S.D." or "acid", by the Grand Jury of Mobile County, Alabama, at its January, 1988, session. (R.p.1)

On February 8, 1988, the Petitioner waived arraignment and pleaded not guilty. (R.p.3)

On March 4, 1988, the Petitioner filed motions to suppress his statement and the evidence found as a result of a search of his residence pursuant to a search warrant;

2. §20-2-23. SAME -- LISTING OF CONTROLLED SUBSTANCES.

"The controlled substances listed in this section are included in schedule I:

* * *

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: ...

"(i) Lysergic acid diethylamide...."
(Code of Alabama, 1975)

raising the same points raised on appeal in state court and here. The same were overruled, after a hearing, on June 16, 1988. (R.p.13-18)

On June 16, 1988, both parties agreed to submit the case to the court and to waive trial by jury. The Court then heard the evidence on the motions to suppress and the indictment in the same proceeding. (R.p.25 and Tr.4-101)

On June 16, 1988, the cause came on for trial, before Honorable Edward B. McDermott, a Circuit Judge. The Petitioner was attended by his Attorney, Honorable Thomas M. Haas. The State was represented by its District Attorney, Honorable Chris M. Galanos, and his Assistant, Honorable Russ Ramsey. (R.p.25 and Tr.1)

On hearing the evidence and argument of counsel, the Learned Trial Judge found and adjudged the Petitioner guilty as charged in the indictment. (R.p.25 and 100-101)

On July 22, 1988, the Petitioner was sentenced to six years imprisonment, a fine of \$5,000.00 and to pay \$25.00 to the victim's compensation fund. (R.p.51 and Tr.pp.6-7)

Appeal followed. (R.p.51 and Tr.p.7)

On May 12, 1989, the Court of Criminal Appeals affirmed the Petitioner's conviction with a most learned opinion. Helton v. State, 549 So.2d 589 (Ala. Crim. App, 1989)

On May 26, 1989, the Petitioner applied for rehearing, but the application was overruled on June 30, 1989, without further opinion

The Petitioner petitioned the Supreme Court of Alabama for a writ of certiorari raising the same points raised here. The same was denied on September 22, 1989.

STATEMENT OF THE FACTS

The Petitioner's conviction is based on the following facts:

On or about May 18, 1987, Officer Cesar Perez, an investigator assigned to the Narcotics Section of the Mobile Police Department, received information from a confidential informant to the effect that lysergic acid diethylamide or L.S.D. was being sold at a certain house. Officer Perez strip-searched the informer to make sure that the informer had no L.S.D. on his person. As officer Perez watched from the parking lot of an apartment complex next door, the informer approached the Petitioner's house. Perez observed that the house was exactly as the informer had described it: The first house facing Center Drive off of Old Shell Road, a yellowish tan house, with brown trim, surrounded by burglar bars. (Tr.pp.5-9)

Perez watched the informer knock at the house and gain admittance. About ten or fifteen minutes later the informant left the house. He met Officer Perez next door and turned over a heartshaped piece of blotting paper. The informer told Officer Perez that the paper was sold to him or her as L.S.D. by a white male known to the informer only as "Wayne". Perez recognized the heartshaped blotting paper as a way L.S.D. is commonly distributed in Mobile, Alabama. (Tr.pp.9-14)

Officer Perez submitted the blotting paper to the City Laboratory for analysis. On May 20, 1987, after receiving a report indicating the presence of L.S.D. on the paper, Perez sought and obtained a search warrant for the Petitioner's residence. The affidavit recited the facts heretofore narrated. The only objection to the warrant raised in the State Court appeal related to

the description of the place to be searched.

That description read as follows:

"...[The] residence located on Center Street, approximately 2/10's of a mile South of Old Shell Road. Confidential informant further described the house as being Yellowish/Tan in color with Brown trimming and surrounded with burglar bars, being the first house to the right when proceeding South on Center Street from Old Shell Road...."
(Tr.p.113; emphasis supplied)

The warrant was issued to search the

"...Yellow, Tan house with brown trimming [sic], surrounded by burglar bars, located on Center Street, approximately 2/10's of a mile South of Old Shell Road, first house on the right facing Center Street off Old Shell...."
(Tr.p.115; emphasis supplied)

It was undisputed that the Petitioner lived on Center Drive, not Center Street. It was also undisputed that Center Street is a very short street which runs from Doctor's Hospital to St. Stephens Road in Mobile and does not

intersect Old Shell Road. It was also undisputed that the description of the Petitioner's house in the warrant was accurate in detail, except for the street-drive error. Finally, it was never suggested that the description in the warrant could have been taken as indicating any building in Mobile County, except the Petitioner's house. (R.pp.14-19, 35-37 and 113-115)

Since the informer had told Perez that the Petitioner had stated that, because of the burglar bars, he would have time to destroy the evidence before the police could get inside, the officers waited for the Petitioner to leave the house before attempting to execute the warrant. On May 21, 1987, the officers saw the Petitioner come out of the house, get in a car and drive away. A uniformed officer stopped the Petitioner. The Petitioner was arrested and brought back to the house. Using the Petitioner's keys the officers entered the house and searched it.

The Petitioner was advised of and acknowledged understanding his constitutional rights. The officers discovered a considerable quantity of L.S.D, as well as other controlled substances. When one of the searching officers found a blue vase containing contraband and brought it to Officer Perez. The Petitioner, who was seated near Perez said: "Oh, shit [sic]!" (Tr.p.23) Also, discovered were several pieces of mail addressed to the Petitioner. Some of the mail was addressed to him at 108 Center Street and some addressed to him at 108 Center Drive. (R.p.31) Although there were two bedrooms in the house, one was filled with musical equipment and had no bed, dresser or other furniture. (Tr.pp.19-32 and 54-55)

The identity of the materials seized as L.S.D. was stipulated. (R.p.79)

The Defense consisted primarily of character evidence, but one witness testified that a young lady lived with the Petitioner at

some point. This was probably during the winter of 1986 or 1987. (R.pp.93-94)

SUMMARY OF THE ARGUMENT

1. A clerical error which cannot prevent a reasonable officer from ascertaining and identifying the place to be searched does not invalidate a search warrant. Steele v. United States, 267 U.S. 498, 503, 69 L.Ed. 757, 760, 45 S.Ct. 414 (1925).

2. The information available to the officers at the time they arrested the Petitioner certainly warranted a reasonable belief that the Petitioner was committing a felony. Texas v. brown, 460 U.S. 730, 742, 75 L.Ed.2d 502, 514, 103 S.Ct. 1535 (1983).

3. The evidence against the Petitioner was patently sufficient to authorize his conviction. E.g. Jackson v. Virginia, 443 u.s. 307, 326, 61 L.Ed.2d 560, 578, 99 S.Ct. 2781 (1979).

ARGUMENT

I.

IN RE: THE SEARCH WARRANT

The Petitioner claims that the description of the place to be searched was insufficient, since the Petitioner lived on Center Drive, and the warrant described the residence as being on Center Street. However, the affidavit and warrant described in detail the rather unique appearance of the house and its precise relationship to Old Shell Road. If an officer had gone to Center Street and attempted to locate the house, it is highly unlikely that he or she would have found any building matching the description in the warrant, and it would have been impossible to find any house having such a relationship to Old Shell Road, since Center Street and Old Shell Road do not intersect. Such an officer would have either returned the warrant "not found" or assumed that there was confusion over the street-drive designation, a common

clerical error, and tried Center Drive. In the later case the officer would have immediately located the Petitioner's house. It is clear that the warrant authorized the search of no building, except the Petitioner's house. Compare Finch v. State, 479 So.2d 1314, 1318-1321 (Ala. Crim. App, 1985), cited and relied on by Petitioner.

This Honorable Court has ruled that:

"...It is enough if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended...." Steele v. United States, 267 U.S. 498, 503, 69 L.Ed. 757, 760, 45 S.Ct. 414 (1925)

Obviously, the description here met this standard. The Postal Service had no difficulty delivering the Petitioner's mail, even when it was addressed to him on Center Street. Obviously, any intelligent person familiar with Mobile and the tendency of humans for clerical errors, would have known

that Center Drive was intended from the reference to Old Shell Road. Neugent v. State, 340 So.2d 55, 57 (Ala. Crim. App, 1976); cert. den. 340 So.2d 60. Helton v. State, 549 So.2d 589, 589-591 (Ala. Crim. App, 1989); cert. den.

II.

IN RE: THE ARREST

The Petitioner contends that he was arrested without probable cause. Yet, the officers knew that a white male named "Wayne" at this residence was selling L.S.D. They observed no one else at the residence. A neutral magistrate had found probable cause to believe that L.S.D. was located on the premises. The Petitioner was the only person observed there. The Petitioner, a white male named "Wayne", was arrested just after he departed the building.

Probable cause is concerned with probabilities, not evidence sufficient to

establish a prima facie case or proof beyond a reasonable doubt. Spinelli v. United States, 393 U.S. 401, 419, 21 L.Ed.2d 637, 645, 89 S.Ct. 584 (1969) As this Honorable Court has said:

"...As the Court frequently has remarked, probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief,' Carroll v. United States, 267 U.S. 132, 162, 69 L.Ed. 543, 45 S.Ct. 280 (1925), that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required. Brinegar v. United States, 338 U.S. 160, 176, 93 L.Ed. 1879, 69 S.Ct. 1302 (1949). (Texas v. Brown, 460 U.S. 730, 742, 75 L.Ed.2d 502, 514, 103 S.Ct. 1535 [1983])

Obviously, the officers in this case had clear probable cause at the time they arrested the Petitioner. Helton v. State, 549 So.2d 589, 591-592 (Ala. Crim. App, 1989); cert. den.

III.

IN RE: THE SUFFICIENCY OF THE EVIDENCE

The Petitioner was convicted on the basis of circumstantial evidence which proved the following:

1. L.S.D. was obtained at the house two days before the search.
2. The Petitioner resided at the house.
3. No one else was observed at the house.
4. The only other person who was shown to have lived there was a young woman, who

left some months, perhaps more than a year, before.

5. There was considerable L.S.D. found in the house in numerous locations.

6. The Petitioner's reaction on seeing the blue vase in police hands was extremely incriminating.

Obviously, this was sufficient evidence under the United States Constitution (Jackson v. Virginia, 443 U.S. 307, 326, 61 L.Ed.2d 560, 578, 99 S.Ct. 2781 [1979]) and Alabama. Law. Robinette v. State, 531 So.2d 697 (Ala, 1988); Ex parte Cunningham, 548 So.2d 1049 (Ala, 1989); Lander v. State, ___ So.2d ___ (Ala. Crim. App, May 26, 1989), Mns. op. p. 2; cert. den. (Ala, Dec. 1, 1989); Helton v. State, 549 So.2d 589, 592ff (Ala. Crim. App, 1989); cert. den.

CONCLUSION

In conclusion, the Respondent respectfully submits that there is no basis for the writ, and, therefore, the Respondent prays that the writ be denied.

Respectfully submitted,

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BY:

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CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Respondent herein, do hereby certify that on this _____ day of January, 1990, I did serve the requisite number of copies of the foregoing on the Attorneys for Frederick Wayne Helton, Petitioner, by mailing the same to said Attorneys, first class postage prepaid and addressed as follows:

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